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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/987,816	11/16/2001	Kenichi Yoshida	ASA-1041	7644
7590 07/21/2005 MATTINGLY, STANGER & MALUR, P.C. 1800 DIAGONAL ROAD, SUITE 370 ALEXANDRIA, VA 22314			EXAMINER JAIN, RAJ K	
			ART UNIT 2664	PAPER NUMBER

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/987,816		YOSHIDA ET AL.	
	Examiner		Art Unit	
	Raj Jain		2664	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/16/01</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-11 are examined on the merits.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 5-11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-18 of copending Application No. 10/001,981. The conflicting claims are identical, and therefore are not patentably distinct from each other.

Comparison of the two applications:

Claim 5 of current application (09/987816) includes an method for access point of an Internet provider to connect to a mobile/wireless terminal by first detecting available access points and than obtaining the best access point to connect with.

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Similarly, claim 12 of copending Application No. 10/001,981 also discloses an method for access point of an internet provider to connect to a mobile/wireless terminal by first detecting available access points and than obtaining the best access point to connect with.

Claim languages of both claims are phrased differently to claim the same invention, thus they are not patentably distinct from each other

Claims 6-11 of the present application are same to claims 13-18 respectively of the co-pending Application No. 10/001,981.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Nishino (US006233452B1).

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Regarding claim 1, Nishino discloses a communication system (see Fig. 3) having a portable computer (see col 3 lines 49-54) provided with a communication function for enabling said computer to communicate data via public phone (see col 8 lines 35-41), comprising:

- computer having a standard wireless data communications device (see Figs. 1 & 3, col 8 lines 31-35, a wireless information processing terminal is construed to be a computer in this case that can connect wirelessly, the standard wireless data communications device is a modem within the computer.);

- public phone having a standard wireless data communication device (see col 8 lines 35-40, public phone is a PSTN network with appropriate modems for wireless connection to a wireless device such as PC/laptop via appropriate base stations);

- and wherein said computer serves to wirelessly communicate data with said public phone and said public phone serves to connect with a connecting line of an internet provider, for connecting said computer with the internet (see col 3 line 56- col 4 line 20, col 8 lines 31-42, a wireless processor such as a computer attempts a wireless connection to an internet service provider (access point) that connects to a base station and further connects to a PSTN line).

Regarding claim 2, Nishino discloses obtaining information of computer terminal to provide public line connecting device with the information for specifying one provider (see col 3 lines 44-47 col 4 lines 10-20, once the wireless device obtains the required access point information, it then retrieves one of the access points that is associated

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with a current wireless base station and attempts an connection to the retrieved access point.)

Regarding claim 5, Nishino discloses a method of connecting a mobile terminal (Fig. 1) provided with a wireless communication unit with the Internet (Fig. 3), comprising the steps

- detecting a communicable public line connecting device to be connected with a public line (see abstract, Fig. 3, col 2 lines 35-60, col 3 lines 44-54, col 3 line 64- col 4 line 5, a wireless device detects available access points within its serving area that in turn is connected to a master serving station further connected to a PSTN or the like);

- and obtaining information about access points of an Internet provider from said detected public line connecting device (see Figs. 1 & 3, col 4 lines 14-25, col 9 lines 3-11, lines 25-40, access point information once obtained is stored within a memory module of the wireless unit for retrieval and connection later as appropriate).

Regarding claim 6, Nishino discloses visual display output of any acquired information so desired (see Fig.1, col 5 lines 37-45).

Regarding claim 7, Nishino discloses connecting to an obtained access point (see Figs. 1 & 3, col 4 lines 14-25, col 9 lines 3-11, lines 25-40, access point information once obtained is stored within a memory module of the wireless unit for retrieval and connection later as appropriate).

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Regarding claim 8, Nishino discloses toll information of public line from connecting device (see table 1, col 12 lines 55 –67).

Regarding claim 9, Nishino discloses visual display output of any acquired information so desired (see Fig.1, col 5 lines 37-45, table 1, col 12 lines 55-67).

Regarding claim 10, Nishino discloses accessing a mobile terminal with the access point selected through the public line connecting device selected on said obtained access point and toll (see col 2 lines 40-50, col 9 lines 3-40) a user will access an internet service based on selectable locations and service cost based on available access points either via PC or wireless device as appropriate.

Regarding claim 11, Nishino discloses enabling mobile terminal to provide public line connecting device with the information for specifying one provider (see col 3 lines 44-47 col 4 lines 10-20, once the wireless device obtains the required access point information, it than retrieves one of the access points that is associated with a current wireless base station and attempts an connection to the retrieved access point.)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishino (US006233452B1) as applied to claim 1 above, and further in view of Christie et

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al (US006535483B1). Nishino discloses a wireless information processing system that is connectable to an access point prepared by an Internet provider (see Figs 1, 3 and abstract). Nishino further discloses detection and appropriate allocation of relevant access points within a wireless cell or network.

Nishino fails to disclose general line information (such as line type, line speed, and congestion state).

Christie discloses general line information (such as line type, line speed, and congestion state) (see col 26 line 49 – col 27 line 52, Figs. 17-19, 21). The incorporation of line information provides a database for billing and fault recovery due to network congestion, link failure, and excessive link charge.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made incorporate general line information within Nishino so as to provide a database for billing and fault recovery due to network congestion, link failure, and excessive link charge.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raj Jain whose telephone number is 571-272-3145.

The examiner can normally be reached on M-F.

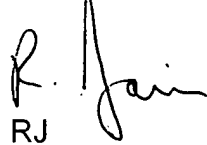
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on 571-272-3134. The fax phone numbers

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for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-

2600

A handwritten signature in black ink, appearing to be "R. Jain", is written over the text "RJ".

RJ

July 19, 2005